IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4093 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SHREE V. ENGINEERING AND SONS - Petitioner(s)
Versus
COMPETENT AUTHORITY AND DEPUTY COLLECTOR (ULC) & ANR. - Respondent(s)

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Appearance :
SHRI J.R. NANAVATI for Petitioner(s).
SHRI L.R. PUJARI, ASST. GOVERNMENT PLEADER for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/12/2006

ORAL JUDGMENT

1. Heard the learned Counsel for the parties.

2. The only question raised in this Writ

Application at the time of argument is that the petitioner was never dispossessed in accordance with law and as it is to be presumed to be in possession, the Court should declare that the proceedings have abated and the petitioner now cannot be dispossessed.

3. It appears that on 5th December, 1985, the Mamlatdar (Agricultural Land Tribunal), held that the petitioner was in possession of 7551.80 sq. mtrs. of land in excess of the ceiling limit. The order was confirmed in appeal and thereafter, the present Writ Application came to be filed.

4. It is the submission of the learned Counsel for the petitioner that on 5th May, 1999, after repeal of the Urban Land (Ceiling & Regulation) Act, 1976 [“the Act” for short], the Court declared that as the petitioner was not dispossessed, the proceedings would abate.

5. The State Government, submitting that the petitioner was already dispossessed, filed a review application, read as Miscellaneous Civil Application No.1433 of 1995, and clearly stated before the Court that the possession was taken in accordance with law. The Review Application came to be rejected on 10th September,

1995. Being aggrieved by the said order, the State preferred Letters Patent Appeal No.1005 of 2001; the said appeal was allowed on a concession by the present petitioner. The Government has now filed an affidavit on 30th September, 2005 wherein they have opposed the petition on merits and have also made a submission that the petitioner was dispossessed on 26th April, 1990 and under the circumstances, the cause would not abate.

6. Shri Nanavati, learned Counsel for the petitioner, relying upon a judgement dated 21st December, 2005 in Special Civil Application No.12602 of 2001 and Special Civil Application No.8402 of 1999 by a learned single Judge passed in the matter of ***Kapilaben Ambalal Patel vs. State of Gujarat***, submitted that unless the possession is taken in legal manner and in accordance with law, the petitioner would be deemed to be in possession. When this Court asked as to why this question was not raised earlier, in reply, it was submitted that the Government had filed its affidavit on 30th September, 2005 and before that, the petitioner did not know as to what was the real position.

7. Shri Pujari, learned Assistant Government Pleader for the respondents, submits that the judgement

in the matter of ***Kapilaben Ambalal Patel*** (*supra*) was altogether on different facts, it would have no application to the present set of facts. His submission is that if the law does not provide for a thing to be done in a particular manner and no procedure is prescribed, then, the Government would be free to take possession in a manner, which otherwise is not illegal.

8. Shri Nanavati, learned Counsel for the petitioner, submits that before taking possession, appropriate notice should be given to the person in possession, survey of the land should be made, measurement should be taken and the person, who wants to take possession, must show his authority to take the possession. He also submits that in case of open land, possession cannot be taken by preparing a *panchnama*, some act must always be done to show that possession was taken.

9. In the present matter, it is not in dispute before me that the order under Section 10(1) of the Act was issued on 21st September, 1986, an order under Section 10(3) was passed on 27th February, 1986 and notice under Section 10(5) of the Act was issued to the petitioner on 16th October, 1989, clearly informing the petitioner that

it was required to surrender the possession to the Government and in case of failure, the State would be entitled to take the possession.

10. The petitioner, despite service of this notice, did not hand over the possession and therefore, the State Government, through its officers and authorities, entered upon the land on 26th April, 1990 and prepared a *panchnama* that they were taking possession. The *panchnama* is being challenged on the ground that no notice was given to the petitioner to remain present on the spot on 26th April, 1990, and on the ground that it appears to be a paper *panchnama*. Once the competent authority had issued a notice under Section 10(5), then, the petitioner in absence of the order of stay or injunction was obliged to hand over the possession and in case, he was not handing over the possession, the Government had authority under Section 10(6) of the Act to enter upon the land and take the possession.

11. The submission of the learned Counsel for the petitioner that survey should be carried out, measurement must be taken and authority to take possession must be shown, is virtually based on the earlier judgement and not on any provisions of law. The Urban Land Ceiling Act

does nowhere say that in what particular manner, possession is to be taken.

12. It is trite to say that in case of open land, unless some overt act is shown by somebody, it would be deemed to be in possession of the original owner. If on 26th April, 1990, the properties vested in the Government free from all encumbrances and the Government was entitled to enter upon the land as owner and thereafter, they enter upon the land after preparation of the *panchnama*, the property would continue to remain in their possession. It is futile to say that the petitioner for the first time was informed about its dispossession in the counter affidavit dated 30th September, 2005. In fact, the State Government had filed Review Application in the year 1995 wherein they had stated that they had already taken possession. If that be so, the petitioner after 16 years of dispossession and 10 years of declaration cannot say that it was informed for the first time in 2004. When the State Government had come out with a specific case, that too, in the year 1995, that they had dispossessed the petitioner, the petitioner did not do anything nor even said that it was not dispossessed in accordance with law.

13. In a case where the property is identifiable, survey, measurement, etc. are not required to be carried out. It is only in a case where the property cannot be identified, some person has to identify the property or from the revenue records, the identification must be established. In the present case, when the Government says that they could identify the property and enter upon possession, it would be futile on the part of the petitioner to say that the survey was to be conducted and measurements were to be taken.

14. The petitioner simply says that the person, to enter in possession, must show his authority, but, does not say that why such person would not have authority if the competent authority asked him to enter upon the land, prepare a panchnama and take the possession.

15. In view of the authority delegated by the competent authority in favour of the person, who entered upon the land, it would not be proper to say that the said person had no authority under the law to take possession of the property.

16. The judgement in the matter of ***Kapilaben Ambalal Patel*** (*supra*) does say that in case of open land,

the Government should do something to satisfy the Court that they had taken possession of the property. The learned single Judge observed that particular acts should be done to show that the original owner was dispossessed. In a given case, as I have observed, entry upon the open land in itself would amount to dispossession.

17. Taking into consideration the totality of the circumstances and the legal provisions, I am of the opinion that the petitioner was dispossessed on 26th April, 1990.

I specifically asked Shri Nanavati, learned Counsel for the petitioner, that whether the petitioner wants to say anything on merits, Shri Nanavati submitted that he does not wish to argue anything on merits.

18. The petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated. No costs.

[R.S.Garg, J.]

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